

~~Case 8.00 M~~

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CLERK OF THE DISTRICT COURT
SHADOW W. WICKING
DISTRICT OF CALIFORNIA

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

VRW

In the Matter of:

CV 0.8 NoMISC 80 023MISC

MING CHEN GEORGE YANG,

**MOTION TO CHANGE
THE DATE OF BIRTH ON
PETITIONER'S CERTIFICATE OF
NATURALIZATION; MEMORANDUM
OF POINTS AND AUTHORITIES;
SUPPORTING DECLARATIONS;
SUPPORTING EXHIBITS**

Petitioner.

Hearing date:

) Time:

18 **NOTICE IS HEREBY GIVEN** that on _____, at _____, or as soon
19 thereafter as the matter may be heard, in Department _____ of this Court, located at 450 Golden
20 Gate Avenue, San Francisco California, Petitioner MING CHEN GEORGE YANG will move
21 for an order to change the date of birth on his naturalization certificate.

22 Petitioner requests that his birth date on his naturalization certificate be changed from
23 February 3, 1942 to February 3, 1941 to indicate his correct birth date. This motion is
24 accompanied and supported by the attached memorandum of points and authorities, declarations,
25 and exhibits.

26 | //

27 | //

28 | //

MEMORANDUM OF POINTS AND AUTHORITIES**INTRODUCTION**

Petitioner, MING CHEN GEORGE YANG [hereinafter "Petitioner"] submitted an N-400 application for naturalization in 1963. Later, on March 3, 1964, Petitioner submitted a letter requesting a correction of his birth date from February 3, 1941 to February 3, 1942, based on his parents' information that there was an incorrect conversion of the Chinese Lunar Calendar to the Western Calendar. On June 9, 1964, Petitioner became a U.S. citizen and obtained his certificate of naturalization, indicating a birth date of February 3, 1942.

Petitioner subsequently discovered that the February 3, 1942 birth date indicated on his certificate of naturalization was incorrect. As such, Petitioner submitted Form N-565, Request for Replacement of Naturalization/Citizenship Document, with the USCIS in order to obtain an amended certificate of naturalization, which would indicate his true and correct birth date of February 3, 1941. However, the USCIS denied his request on February 23, 2007 after stating that the change is not justified pursuant to 8 C.F.R. Section 358.3 because Petitioner had previously alleged at the time of his naturalization that his birth date was February 3, 1942. Thereafter, Petitioner was instructed to file a motion to change the date of birth on his certificate of naturalization with the U.S. District Court.

Accordingly, through undersigned counsel, Petitioner respectfully submits this motion and requests that this Court correct his certificate of naturalization by changing the birth date on the certificate from February 3, 1942 to February 3, 1941 to indicate his correct birth date.

JURISDICTION

Courts in general do not like to change birth dates on naturalization certificates unless it was a clerical error. *See* 8 CFR §§ 334.16(b), 338.5. However, while the United States Citizenship and Immigration Services' (USCIS) regulations may not permit it to administratively amend the birth date on a Certificate of Naturalization in the absence of clerical error, this Court has the power to order such an amendment. Duc Minh Ha v. USCIS, No. 05-0059, 2006 U.S. Dist. LEXIS 48414, 2006 WL 1997360, at *4-*6 (D.Minn. July 14, 2006). In fact, courts have

1 granted applications to correct the date of birth on a certificate of naturalization where the
 2 plaintiff/petitioner provides unequivocal evidence as to his true date of birth or where there is no
 3 evidence of fraud and no prejudice results to the government. *See In re Jim Shai Dud Lee*, 2007
 4 U.S. Dist. LEXIS 25922 (N.D. Cal.2007); Kouanchao v. USCIS, 358 F. Supp. 2d 837, 838-39
 5 (D. Minn. 2005); Varghai v. INS Dist. Director, 932 F. Supp. 1245, 1246-7 (D. Or. 1996).

6 This Court, therefore, has jurisdiction to amend Petitioner's date of birth on his
 7 naturalization certificate because, as will be detailed below, Petitioner can provide unequivocal
 8 evidence as to his true date of birth and because there is no evidence of fraud.
 9

10 INTRADISTRICT ASSIGNMENT

11 Pursuant to Civil Local Rule 3-2(c)(d) for the Northern District of California, this case
 12 can
 13 be assigned to either the San Francisco or Oakland Division of the U.S. District Court, Northern
 14 District of California because a substantial part of the events or omissions which give rise to the
 15 claim occurred in San Francisco County. More specifically, Petitioner's naturalization certificate
 16 was issued by the U.S. District Court, Northern District of California, San Francisco Division
 17 and Petitioner had made his initial request for a change of his birth date on his naturalization
 certificate in San Francisco.

18 ISSUES

- 19 I. **HAS PETITIONER MET HIS BURDEN OF PROOF TO SUPPORT THE
 CHANGE OF HIS BIRTH DATE ON HIS NATURALIZATION CERTIFICATE ?**
- 20 II. **HAS PETITIONER COMPLIED WITH THE PROCEDURAL REQUIREMENTS
 TO SUPPORT GRANTING HIS MOTION TO CHANGE HIS BIRTH DATE ON
 HIS NATURALIZATION CERTIFICATE ?**

23 STATEMENT OF RELEVANT FACTS

24 Petitioner MING CHEN GEORGE YANG [hereinafter "Petitioner"] was born on
 25 February 3, 1941 in Shanghai, China. [Declaration of Ming Chen George Yang] According to
 26 the Petitioner's file with the USCIS, an April 23, 1952 Statutory Declaration prepared by
 27 Petitioner's father stated that Petitioner's birth date was February 3, 1941. Attached and
 28 incorporated herein as EXHIBIT A is the USCIS's February 23, 2007 Decision to deny

1 Petitioner's request for a change of his birth date on his naturalization certificate which makes
2 reference to the April 23, 1952 Statutory Declaration. Furthermore, Petitioner does not have an
3 official birth certificate because attached to the April 23, 1952 Statutory Declaration was a
4 statement from the Vice Consul of the United States which indicated that a birth certificate was
5 not available for Petitioner "because the Government of China does not maintain the pertinent
6 record." See EXHIBIT A, which makes reference to the Vice Consul's statement.

7 Sometime in 1958 when Petitioner was 17 years old, Petitioner's parents sought political
8 asylum from the Communist regime in China and Petitioner's family was thereafter sponsored by
9 the World Council of Churches. [Declaration of Ming Chen George Yang] On August 19, 1958,
10 Petitioner was issued a Certificate of Identity by an Immigration Officer in Hong Kong, which
11 stated that his birth date was February 3, 1941. [Declaration of Ming Chen George Yang]
12 Attached and incorporated herein as EXHIBIT B is Petitioner's Certificate of Identity. After
13 Petitioner's family was granted asylum, Petitioner used this Certificate of Identity, which served
14 as a national passport, to enter the United States as a lawful permanent resident on February 11,
15 1959. [Declaration of Ming Chen George Yang]

16 In 1963, Petitioner became eligible to become a U.S. citizen and therefore submitted a
17 March 11, 1963 Declaration of Intent to become a U.S. citizen. [Declaration of Ming Chen
18 George Yang] Attached and incorporated herein as EXHIBIT C is Petitioner's March 11, 1963
19 Declaration of Intent. Petitioner's March 11, 1963 Declaration of Intent and his initial
20 application for naturalization state that his birth date is February 3, 1941. [Declaration of Ming
21 Chen George Yang; EXHIBIT C] Therefore, up until this time, Petitioner had always believed
22 that February 3, 1941 was his birth date and as such used that birth date on his immigration and
23 naturalization documents. [Declaration of Ming Chen George Yang]

24 Sometime after Petitioner submitted his naturalization application, Petitioner and his
25 sister received information from their parents that their dates of birth were allegedly reported
26 incorrectly to the Hong Kong government as the result of an incorrect conversion from the
27 Chinese Lunar Year to the Western calendar. [Declarations of Ming Chen George Yang and

1 Ming Wei Lena Yang] Petitioner did not doubt nor question this information from their parents
2 regarding their birth dates because as a young adult in 1964, he had deferred to his parents'
3 information and instructions, especially because they were more knowledgeable than him about
4 Chinese culture and tradition. [Declaration of Ming Chen George Yang] Accordingly, Petitioner
5 submitted a letter on March 3, 1964 to request that his birth date be changed from February 3,
6 1941 to February 3, 1942, the date his parents had told him was his actual birth date. [Declaration
7 of Ming Chen George Yang] Also attached and incorporated herein as EXHIBIT D is the March
8 3, 1964 Letter. On June 9, 1964, Petitioner obtained his citizenship and a certificate of
9 naturalization indicating his date of birth as February 3, 1942. [Declaration of Ming Chen
10 George Yang]

11 Years later, Petitioner discovered that his parents were actually incorrect in their
12 determination that they had reported his and his sister's birth dates to the Hong Kong government
13 based on an erroneous conversion from the Chinese Lunar calendar to the Western calendar.
14 [Declaration of Ming Chen George Yang] Petitioner eventually learned from his father that his
15 parents had believed that there was an incorrect conversion of Petitioner's birth date because his
16 parents thought that Petitioner's birth date should be listed as February 3, 1942 in order to
17 comply with the Chinese Lunar calendar. [Declaration of Ming Chen George Yang] By
18 complying with the Chinese Lunar calendar and listing Petitioner's birth date as February 3,
19 1942, Petitioner's parents believed that it would make Petitioner a year younger according to the
20 Chinese Lunar calendar so that his birth year and age would then be consistent. [Declaration of
21 Ming Chen George Yang] This is because Petitioner's birth date in early February fell during the
22 time when the new Chinese year usually began according to the Chinese Lunar calendar.¹ As
23

24
25 ¹"The Chinese Lunar Calendar is a yearly one, with the start of the lunar year being based
26 on the cycles of the moon. Therefore, because of this cyclical dating, the beginning of the year
can fall anywhere between late January and the middle of February."
<http://www.chinese.new-year.co.uk/calendar.htm>.

27 Also see, <http://www.infoplease.com/ipa/A0002076.html>, which states that, "The Chinese
28 New Year is celebrated at the second new moon after the winter solstice and falls between

1 such, Petitioner's parents believed that since Petitioner was born before the new year according
 2 to the Chinese Lunar calendar, then he would have been already one years old on his actual birth
 3 date of February 3, 1941 according to the Chinese Lunar calendar. [Declaration of Ming Chen
 4 George Yang] Therefore, when his parents told Petitioner in 1964 that there was an incorrect
 5 conversion of his birth date from the Chinese Lunar calendar to the Western calendar, they were
 6 under the assumption that February 3, 1942 was Petitioner's correct birth date based on their
 7 belief that the new year in 1941 fell after February 3, 1941. [Declaration of Ming Chen George
 8 Yang]

9 Petitioner discovered that his parents were incorrect in their belief that Petitioner's birth
 10 date was February 3, 1942 because the Chinese New Year in 1941 began on January 27, 1941,
 11 which means that Petitioner's actual birth date of February 3, 1941 fell *after* the Chinese New
 12 Year.² [Declaration of Ming Chen George Yang] This means that Petitioner's birth date of
 13 February 3, 1941 coincided with his actual age according to both the Chinese Lunar calendar and
 14 Western calendar. [Declaration of Ming Chen George Yang] In other words, on Petitioner's
 15 birthday in 1942, Petitioner was one years old according to both calendars. [Declaration of Ming
 16 Chen George Yang]

17 Because Petitioner had discovered that February 3, 1941 was his true date of birth, he
 18 never officially changed his date of birth with any other governmental agency or on any other
 19 record or document, including with the Social Security Administration and the California State
 20 Department Motor Vehicles, as all of these records indicated his birth date as February 3, 1941.
 21 [Declaration of Ming Chen George Yang] Accordingly, Petitioner continued to use February 3,
 22 1941 as his actual birth date. [Declaration of Ming Chen George Yang] An April 2007 Report
 23 on Confidential Social Security Benefit Information lists Petitioner's date of birth as February 3,
 24

25
 26 January 21 and February 19 on the Gregorian calendar."

27 ² According to the website at <http://www.asia-home.com/china/lunarcal.php>, the New
 28 year began on Jan. 27, 1941. Also, February 3, 1941 was the 8th day of the new year on the
 Chinese Lunar calendar. [<http://www.chinesefortuneCalendar.com/TDB/lunarcal1.asp>]

1 1941. Attached and incorporated herein as EXHIBIT E is the April 2007 Report on Confidential
 2 Social Security Benefit Information. On his California Driver's License, Petitioner's date of
 3 birth is stated as February 3, 1941. Attached and incorporated herein as EXHIBIT F is
 4 Petitioner's California Driver's License. Documents from Medicare, the California State
 5 Teacher's Retirement System, Kaiser Permanente (Petitioner's health insurance), and Petitioner's
 6 employment records also indicate that Petitioner's birth date is February 3, 1941. Attached and
 7 incorporated herein as EXHIBITS G, H, I, and J are the documents from Medicare, the California
 8 State Teacher's Retirement System, Kaiser Permanente, and Petitioner's employment records.

9 Petitioner had not previously requested a change of his birth date on his naturalization
 10 certificate because it had not become an issue until he sought to update his passport to indicate
 11 his true birth date of February 3, 1941. [Declaration of Ming Chen George Yang] Petitioner was
 12 instructed that his passport could not be updated to indicate his true birth date until he had his
 13 naturalization certificate changed to reflect his actual birth date. [Declaration of Ming Chen
 14 George Yang] Moreover, Petitioner had become concerned that there would be an issue of a
 15 double identity if his naturalization certificate and passport indicated a different birth date than
 16 his other official documents, including his drivers' license and Social Security information.
 17 [Declaration of Ming Chen George Yang]

18 Accordingly, Petitioner attempted to change his birth date on his naturalization certificate
 19 by first sending a letter to the USCIS in San Francisco then later submitting a Form N-565,
 20 Request for Replacement of Naturalization/Citizenship Document, with the USCIS in order to
 21 obtain an amended certificate of naturalization, which would indicate his true and correct birth
 22 date of February 3, 1941. [Declaration of Ming Chen George Yang] However, the USCIS
 23 denied Petitioner's request on February 23, 2007. [Declaration of Ming Chen George Yang;
 24 EXHIBIT A]

26 ARGUMENTS

27 I. PETITIONER MEETS THE BURDEN OF PROOF TO SUPPORT THE CHANGE 28 OF HIS BIRTH DATE ON HIS NATURALIZATION CERTIFICATE.

The Petitioner bears the burden of showing that the date on his naturalization certificate is

1 incorrect and that February 3, 1941 is his correct date of birth. In re Lee, 2007 U.S. Dist. LEXIS
2 25922, at *5 (N.D. Cal. 2007); In re Osman, 2007 U.S. Dist. LEXIS 37344 (W.D.N.Y. 2007); In
3 re Nguyen, No. 05-MC-61, 2006 WL 2860814, at *2 (D. Minn. Oct. 4, 2006). Petitioner must
4 satisfy a stringent burden in order to effectuate a change in his or her birth date. See 8 C.F.R. §
5 338.5(e); Kouanchao v. USCIS, 358 F. Supp. 2d 837,838 (D. Minn. 2005). This is because the
6 “regulations are resistant to changing birth dates for any reason other than clerical error on the
7 part of the U.S. officials.” Varghai v. INS Dist. Director, 932 F. Supp. 1245, 1246 (D. Or. 1996).

8

9 As stated above, courts have granted applications to correct the date of birth on a
10 certificate of naturalization where the plaintiff provides unequivocal evidence as to his true date
11 of birth. See Kouanchao v. USCIS, 358 F. Supp. 2d 837, 838-39 (D. Minn. 2005) (granting
12 correction to birth date in certificate of naturalization where petitioner presented evidence of his
13 correct birth date and where there was no opportunity for fraud because birth date had already
14 been changed by Social Security Administration and state motor vehicles division); Varghai v.
15 INS Dist. Dir, 932 F. Supp. at 1246-47 (authorizing a change in birth date on certificate of
16 naturalization where petitioner presented a “wealth of evidence” that 1934, and not 1939, was his
17 correct birth date).

18

19 A careful review and analysis of Petitioner’s case and the record will indicate that he has
20 met his burden of proof to show that a change of his date of birth on his naturalization certificate
21 is justified.

22 **A. Petitioner provides unequivocal evidence as to his true date of birth.**

23

24 First of all, prior to Petitioner’s arrival here in the U.S. and throughout the immigration
25 process, Petitioner’s birth date had been established as February 3, 1941 based on the evidence
26 and information available at the time. Petitioner attests to his true birth date as February 3, 1941
27 by providing evidence that February 3, 1941 was the date listed on all of his immigration
28 documentation prior to his lawful admission into the United States in 1959. An April 23, 1952

1 Statutory Declaration prepared by Petitioner's father stated that Petitioner's birth date was
2 February 3, 1941. [EXHIBIT A] Moreover, attached to this Statutory Declaration was a statement
3 from the Vice Consul of the United States which indicated that a birth certificate was not
4 available for Petitioner "because the Government of China does not maintain the pertinent
5 record." [EXHIBIT A] On August 19, 1958, Petitioner was also issued a Certificate of Identity
6 by an Immigration Officer in Hong Kong, which stated that his birth date was February 3, 1941.
7 [EXHIBIT B] After Petitioner's family was granted asylum, Petitioner used this Certificate of
8 Identity, which served as a national passport, to enter the United States as a lawful permanent
9 resident on February 11, 1959. Therefore, prior to Petitioner's arrival here in the U.S. and up
10 until the naturalization process, Petitioner had always believed that February 3, 1941 was his true
11 birth date and had used it on all his documentation.

12 In fact, Petitioner had also stated on his March 11, 1963 Declaration of Intent to become a
13 U.S. citizen and on his initial application for naturalization that his birth date was February 3,
14 1941. [EXHIBIT C] However, sometime after he submitted his naturalization application,
15 Petitioner and his sister received information from their parents that their dates of birth were
16 allegedly reported incorrectly to the Hong Kong government as the result of an incorrect
17 conversion from the Chinese Lunar Year to the Western calendar. Accordingly, Petitioner
18 submitted a letter on March 3, 1964 to request that his birth date be changed from February 3,
19 1941 to February 3, 1942, the date his parents had told him was his actual birth date. [EXHIBIT
20 D] On June 9, 1964, Petitioner obtained his citizenship and a certificate of naturalization
21 indicating his date of birth as February 3, 1942.

23 Consequently, Petitioner later discovered that his parents were actually incorrect in their
24 determination that they had reported his and his sister's birth dates to the Hong Kong government
25 based on an erroneous conversion from the Chinese Lunar calendar to the Western calendar.
26 Petitioner had never doubted the information regarding his birth date from his parents before
27 because as a young adult in 1964, he had always deferred to his parents' instructions and
28

1 information, especially because they were more knowledgeable than him about Chinese culture
2 and tradition.

3 More specifically, Petitioner eventually learned from his father that his parents had
4 believed that there was an incorrect conversion of Petitioner's birth date because his parents
5 thought that Petitioner's birth date should be listed as February 3, 1942 in order to comply with
6 the Chinese Lunar calendar. By complying with the Chinese Lunar calendar and listing
7 Petitioner's birth date in 1942, Petitioner's parents believed that it would make Petitioner a year
8 younger according to the Chinese Lunar calendar so that his birth year and age would then be
9 consistent. This is because Petitioner's birth date in early February fell during the time when the
10 new Chinese year usually began according to the Chinese Lunar calendar. See Footnote 1, supra.
11 As such, Petitioner's parents believed that since Petitioner was born before the new year
12 according to the Chinese Lunar calendar, then he would have been already one years old on his
13 actual birth date of February 3, 1941 according to the Chinese Lunar calendar. Therefore, when
14 his parents told Petitioner in 1964 that there was an incorrect conversion of his birth date from
15 the Chinese Lunar calendar to the Western calendar, they were under the assumption that
16 February 3, 1942 was Petitioner's correct birth date based on their belief that the new year in
17 1941 fell after February 3, 1941.
18

19 Unfortunately, Petitioner discovered that his parents were incorrect in their belief that
20 Petitioner's birth date was February 3, 1942. First of all, the Chinese New Year in 1941 began
21 on January 27, 1941, which means that Petitioner's actual birth date of February 3, 1941 fell after
22 the Chinese New Year. See Footnote 2, supra. This means that Petitioner's birth date of
23 February 3, 1941 coincided with his actual age according to both the Chinese Lunar calendar and
24 Western calendar. In other words, on Petitioner's birthday in 1942, Petitioner was one years old
25 according to both calendars. As such, Petitioner's parents were incorrect in their determination
26 that changing Petitioner's birth date to February 3, 1942 would make his birth year consistent
27 with his actual age. Petitioner's parents' mistake in changing his birth date to February 3, 1942
28 resulted in Petitioner being one year older than he actually was at the time of his naturalization.

1 with his actual age according to the Chinese Lunar calendar because, as discovered later by
2 Petitioner, his February 3, 1941 birth date did not occur before the Chinese new year in 1941.

3 Secondly, Petitioner's parents were also incorrect in their determination that Petitioner's
4 birth date should be changed to coincide his age with the Chinese Lunar calendar. Instead,
5 Petitioner's birth date should have been listed correctly according to the Western calendar.
6 Petitioner's parents should not have believed that their was an incorrect conversion of
7 Petitioner's birth date from the Chinese Lunar calendar to the Western calendar based solely on
8 their belief that Petitioner's birth date should coincide with his actual age according to the
9 Chinese Lunar calendar. Accordingly, Petitioner's birth date should have always been listed as
10 his true and actual birth date of February 3, 1941.

12 Because Petitioner had discovered that February 3, 1941 was his true date of birth, he
13 never officially changed his date of birth with any other governmental agency or on any other
14 record or document, including with the Social Security Administration and the California State
15 Department Motor Vehicles, as all of these records indicated his birth date as February 3, 1941.
16 Accordingly, Petitioner continued to use February 3, 1941 as his actual birth date. As evidenced
17 in an April 2007 Report on Confidential Social Security Benefit Information, Petitioner's date of
18 birth is listed as February 3, 1941. [EXHIBIT E] On his California Driver's License, Petitioner's
19 date of birth is also stated as February 3, 1941. [EXHIBIT F] Moreover, documents from
20 Medicare, the California State Teacher's Retirement System, Kaiser Permanente (Petitioner's
21 health insurance), and Petitioner's employment records all indicate that Petitioner's birth date is
22 February 3, 1941. [EXHIBITS G, H, I, and J]

24 Furthermore, the abundance of evidence indicating Petitioner's actual birth date as
25 February 3, 1941 on other official documents and records, especially with the Social Security
26 Administration and California DMV, support his request to change the birth date on his
27 naturalization certificate to February 3, 1941. See In re Lee, 2007 U.S. Dist. LEXIS 25922 (N.D.
28

1 Cal. 2007); Varghai v. INS Dist. Director, 932 F. Supp. 1245, 1246-7 (D. Or.1996). As in this
2 case, the petitioners in Lee and Varghai had also presented multiple official documents which
3 were sufficient to support changing their birth date on their naturalization certificates, including a
4 copy of the Social Security Benefit Information Form showing that the Social Security
5 Administration had already changed his date of birth in their.records, a factor which was given
6 significant weight. In re Lee, 2007 U.S. Dist. LEXIS 25922, at *8 (citing Varghai v. INS Dist.
7 Dir, 932 F. Supp. at 1246-47). As will be discussed below, there is also no issue of nor any
8 opportunity for fraud because all of Petitioner's other official records and documents already
9 indicate that his true birth date is February 3, 1941.
10

11 In addition, Petitioner had not previously requested a change of his birth date on his
12 naturalization certificate because it had not become an issue until he sought to update his
13 passport to indicate his true birth date of February 3, 1941. Petitioner was instructed that his
14 passport could not be updated to indicate his true birth date until he had his naturalization
15 certificate changed to reflect his actual birth date. Moreover, Petitioner had become concerned
16 that there would be an issue of a double identity if his naturalization certificate and passport
17 indicated a different birth date than his other official documents, including his drivers' license
18 and Social Security information. [See EXHIBITS E, F, G, H, I, and J]
19

20 Because the date of February 3, 1941 was already previously established and used as
21 Petitioner's birth date up until the naturalization process; because his parents were actually
22 incorrect in informing Petitioner that his birth date was February 3, 1942 and in instructing him
23 to change his birth date during the naturalization process in 1964; and because his other official
24 records indicate February 3, 1941 as his actual birth date, there is unequivocal evidence
25 supporting the change of Petitioner's birth date on his naturalization certificate from February 3,
26 1942 to February 4, 1941.
27

28 **B. There is no evidence of fraud with Petitioner's request to change his birth
date on the naturalization certificate.**

1 As stated above, the Courts will not grant a motion to change the birth date on a
2 naturalization certificate if there is evidence of fraud. Kouanchao v. USCIS, 358 F. Supp. 2d
3 837, 838-39 (D. Minn. 2005).

4 For example, a request to change the birth date on a naturalization certificate has been
5 denied where the only evidence submitted to support the change are affidavits from the
6 Petitioner's family, where "petitioner swore to this date of birth (the date of birth that was
7 currently on the certificate) numerous times on various immigration and naturalization
8 documents over a period of several years, and where the Petition itself avers that Petitioner was
9 twenty years old in 1979. In re Lee, 2007 U.S. Dist. LEXIS 25922, at *6 (N.D. Cal. 2007)
10 (citing Ha v. USCIS, 2006 U.S. Dist. LEXIS 48414, 2006 WL 1997360 (D. Minn. 2006)).
11

12 This case differs from Ha because as detailed above, there is an abundance of evidence,
13 including official documents and records, other than just affidavits from Petitioner's family to
14 support the change of Petitioner's birth date on his naturalization certificate to February 3, 1941.
15 As shown above, all of the other documentation, including his drivers' license and Social
16 Security information, indicate that Petitioner's birth date is February 3, 1941. [See EXHIBITS E,
17 F, G, H, I, and J] Moreover, unlike the petitioner in Ha, Petitioner did not swear to the February
18 3, 1942 (the date on his naturalization certificate) as his true birth date on various immigration
19 and naturalization documents. The April 23, 1952 Statutory Declaration prepared by Petitioner's
20 father and the August 19, 1958 Certificate of Identity, both of which were used for Petitioner's
21 immigration to the U.S., state that Petitioner's birth date was February 3, 1941. [See EXHIBITS
22 A and B] Petitioner had also affirmed on his March 11, 1963 Declaration of Intent to become a
23 U.S. citizen and on his initial application for naturalization that his birth date was February 3,
24 1941. [EXHIBIT C] In contrast, Petitioner only relied on the date of February 3, 1942 as his
25 birth date in March of 1964 during the naturalization application process after his parents told
26 him and sister that there was an incorrect conversion from the Chinese Lunar year to the Western
27 him and sister that there was an incorrect conversion from the Chinese Lunar year to the Western
28

1 calendar when reporting their birth dates to the Hong Kong Government. [EXHIBIT D]
2 However, as explained above, Petitioner discovered that his parents were actually wrong in their
3 belief that there was an incorrect conversion and, as a result, February 3, 1941 was his true birth
4 date. After Petitioner discovered that his parents were incorrect about his birth date, Petitioner
5 continued to use February 3, 1941 as his actual birth date, the date which had already been used
6 on all of his other official documents. [See EXHIBITS E, F, G, H, I, and J] Lastly, this case is not
7 like Ha because Petitioner does not state in this present motion that his birth date is anything but
8 February 3, 1941.

9
10 Also, a request to change the birth date has been denied where the petitioner had taken the
11 identity of her older sister when she was married in Vietnam in order to permit the marriage and
12 enable her to come to the United States as the wife of an American citizen because “[the
13 petitioner had] sought [the] amendment in order to correct a deliberate falsehood.” In re Lee,
14 2007 U.S. Dist. LEXIS 25922, at *6 (citing Matter of Shrewsbury, 77 F.3d 490, 1996 WL 64988
15 (9th Cir. 1996).

16 Here, Petitioner is not requesting the change of his birth date on his naturalization
17 certificate to correct nor to perpetuate a fraud. As shown above, Petitioner had always used
18 February 3, 1941 as his birth date up until his parents erroneously informed him that there was an
19 incorrect conversion from the Chinese Lunar calendar to the Western calendar. [See EXHIBITS
20 A, B, C, E, F] He only made the request to change his birth date to February 3, 1942 on his
21 naturalization application after his parents had informed him of this alleged incorrect conversion.
22 However, after discovering that his parents were actually mistaken, Petitioner did not seek to
23 continue to use the incorrect February 3, 1942 birth date as evidenced in all of his other
24 documentation indicating his birth date as February 3, 1941. [See EXHIBITS E, F, G, H, I, and J]
25 The only reason Petitioner requests a change now is because there may be an issue of a double
26 identity because his naturalization certificate does not conform with all of his other official
27
28

1 documents and records, including his Social Security Administration information and his drivers'
2 license, which indicate his actual birth date as February 3, 1941. As such, there is no opportunity
3 for fraud, especially because his birth date of February 3, 1941 had not been changed by the
4 Social Security Administration nor the state motor vehicles division. See e.g., In re Lee, 2007
5 U.S. Dist. LEXIS 25922, at *7-8. [See also EXHIBITS E and F]

6 In addition, it is important to note that Petitioner's previous request in March of 1964 to
7 change his birth date to February 3, 1942 came as a result of information and statements from his
8 parents. As Petitioner was a young adult at the time, he reasonably believed his parents and
9 relied on their information and statements when requesting the birth date change during the
10 naturalization application process. More specifically, Petitioner deferred to his parents regarding
11 this information about his birth date because, as explained above, it dealt with the Chinese Lunar
12 calendar, which his parents were more knowledgeable about, and because as a young adult at the
13 time in 1964, he listened to and believed what his parents said and complied with their
14 instructions. Unfortunately, the statements from Petitioner's parents about his birth date were
15 incorrect as Petitioner later discovered that they were mistaken as to their belief that there was an
16 incorrect conversion from the Chinese Lunar Year to the Western calendar. Accordingly, unlike
17 the petitioners in Ha and Shrewsbury, this misstatement of Petitioner's actual birth date cannot
18 be attributed to him. Furthermore, if this misstatement of Petitioner's birth date is not
19 attributable to him, then it is unlikely that he is personally involved in any attempt to commit a
20 fraudulent act. See In re Lee, 2007 U.S. Dist. LEXIS 25922, at *8 -9.

21
22 Because there is ample and unequivocal evidence as to Petitioner's true date of birth and
23 because there is no evidence of fraud involved in Petitioner's case, Petitioner has met his burden
24 of proof and the Court should grant his motion to change his date of birth on his naturalization
25 certificate.

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3 **II. THIS MOTION SHOULD BE GRANTED BECAUSE PETITIONER HAS**
4 **COMPLIED WITH THE PROCEDURAL REQUIREMENTS OF REQUESTING**
5 **A CHANGE OF HIS BIRTH DATE ON THE NATURALIZATION**
6 **CERTIFICATE.**

7 In permitting a petitioner to change the birth date on his or her naturalization certificate,
8 he or she must meet procedural requirements such as filing the request/motion to change the date
9 of birth on pleading paper and serving the Government, namely the district director having
10 administrative jurisdiction over the territory in which the court is located, in the manner and
11 within the time provided by the rules of court in which application is made. See 8 C.F.R. §
12 334.16(b); In re Hua, 2007 U.S. Dist. LEXIS 26104, at *4-5 (W.D.N.Y. 2007); In re Liu, 1998
13 U.S. Dist. LEXIS 18383, 1998 WL 809037, at *1 (holding that application to change birth date
14 on certificate of naturalization was procedurally deficient where petitioner failed to serve a copy
15 of the application upon respondent, the appropriate district director); In Re Rose, 1994 U.S. Dist.
16 LEXIS 12977, No. 94-0165, 1994 WL 502501, at *1 (E.D. Pa. Sept. 15, 1994) (denying
17 plaintiff's motion to change birth date on her certificate of naturalization where plaintiff did not
18 serve the Immigration and Naturalization Service).

19 In this case, Petitioner has submitted his request officially on pleading paper in a motion
20 to change his date of birth on the naturalization certificate with the U.S. District Court. He has
21 also served the District Director in San Francisco with a copy of this motion, as evidenced by the
22 attached Proof of Service. As such, Petitioner has met the procedural requirements which would
23 support granting his motion to change the birth date on his naturalization certificate.

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CONCLUSION

Based on the above arguments, the Court should grant Petitioner's motion and change the birth date on his certificate of naturalization from February 3, 1942 to February 3, 1941 in order to reflect Petitioner's true and correct birth date.

Dated:

2/20/08

Respectfully submitted,

ELEANOR TUMANENG ANGELES
Attorney for Petitioner

PROOF OF SERVICE

I, the undersigned, declare as follows:

I am a citizen of the United States, over the age of 18 years and I am not a party to the within-entitled action. I am an employee of Angeles & Associates, Attorneys at Law, and my business address is 2610 Central Avenue, Ste 130, Union City, California 94587.

That I served the () original/(X) true copy of the attached:

**MOTION TO CHANGE THE DATE OF BIRTH ON PETITIONER'S
CERTIFICATE OF NATURALIZATION; MEMORANDUM OF POINTS AND
AUTHORITIES; SUPPORTING DECLARATIONS AND EXHIBITS.**

**in person or by placing said original/copy in an envelope which was then sealed, and
was on this day sent by U.S. mail, fully postage-paid addressed as follows:**

x **David N. Still, District Director (By Overnight Mail)**
USCIS, Department of Homeland Security
630 Sansome Street
San Francisco, CA 94111

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on 2/20/08, in Union City, California.

ELEANOR TUMANENG ANGELES
Attorney for Petitioner